Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1971

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CIVIL NO. 71-2855-WPG

ERNEST LEVINE

Petitioner.

-vs-

UNITED STATES OF AMERICA, et al.,

Respondent

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IN THE

SUPREME COURT OF THE UNITED STATES

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CIVIL NO. 71-2855-WPG

ERNEST LEVINE

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-vs-

UNITED STATES OF AMERICA, et al.,

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PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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ERNEST LEVINE
5651 Corteen Place
North Hollywood, California
91607

Petitioner

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PETITION FOR WRIT OF CERTIORARI TO THE

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FOR THE NINTH CIRCUIT

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a Writ of certiorari issue to review the judgment OF THE United States Court of Appeals for the Ninth Circuit affirming the

judgment of the United States District Court for the Central District of California, dismissing the petitioner from his COMPLAINT FOR DAMAGES FOR DISCRIMINATION BASED UPON AGE.

1. OPINION OF THE COURT BELOW

The opinion of the United States District Court is set forth as Appendix A to this petition. There is no opinion from the United States Court of Appeals.

2. STATUTORY PROVISION SUSTAINING JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1972. See Appendix B to this petition.

The jurisdiction of the Court rests on Public Law 89-554; 80 Stat 378, Sect 3307 and Sect 8912, and Federal Perso--nel Manual, Vol 2, Chapter 713, Sub-chapter 18, 4-4, AGE, a. The District

Court had jurisdiction under Public Law 90-202, 81 Stat 602.

3. QUESTION PRESENTED

Does the petitioner have the right to sue the United States Government for DISCRIMINATION BASED UPON AGE?

4. STATUTES AND REGULATIONS INVOLVED

Involved are Public Law 89-554; 80 Stat 378, Sect 3307 and Sect 8912, and Federal Personnel Manual, Vol 2, Chapter 713, Sub-chapter 18, 4-4. AGE, a. They are set forth in Appendix C. Also involved is Public Law 90-202, 81 Stat 602. This is also set forth in Appendix C.

5. STATEMENT OF THE CASE

The petitioner was ordered to dismiss his complaint by the United States District Court judge and the order for dismissal was upheld by the

United States Court of Appeals.

The basis for federal jurisdiction is Public Law 89-554; 80 Stat 378, Sect 8912:

Jurisdiction of Courts

"The district courts of the United States have original jurisdiction, concurrent with the Court of Claims, of a civil action or claim against the United States founded on this chapter."

6. THE FACTS

On May 6, 1971, the petitioner received the following letter from the District Director, Internal Revenue Service:

Dear Mr. Levine:

We have just received word that we can fill only a limited number of Revenue Agent positions. Because our vacancies are limited, we can only consider you for a position in Bakersfield or El Centro. Please call me at 213-688-4132 by May 7, 1971 if you are available for these areas. I would also appreciate knowing if you are not available.

Very truly yours,
(Mrs.) Diane Herrmann
Personnel Staffing Specialist

The petitioner declined the offer on the grounds both Bakersfield and El Centro were too far away.(over 100 miles) However, petitioner avers that he specified on his application that Los Angeles was the primary place where he wished to be employed.

On May 7, 1971 during a telephone conversation with Mrs. Diane Herrmann, Personnel Staffing Specialist of the Internal Revenue Service, she informed him that he had placed 27th out of 27 applicants. Last place. (underscore mine)

On May 20, 1971 during a telephone conversation with Mr. Marshall R. Martinez, Chief, Staffing Programs Section, and the jist of the conversation was the way the Civil Service Commission ranked the applicants, no matter at what

time they had applied, was as follows:

1. Experience
2. Education
3. Oral examination by the Internal Revenue Service

Petitioner is fifty-two (52) years of age, is a Certified Public Accountant in New York (November 1947) and in California (September 1952), has had over thirty (30) years of experience and has passed the oral examination given by the Internal Revenue Service.

7. REASONS FOR GRANTING WRIT

The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court.

The question as to wether or not persons above the age of fifty (50) can ever look forward to an opportunity to serve their government is indeed crucial.

. . . .

## 8. ARGUMENT

### POINT 1

### GROUNDS FOR SUIT

Seventeen years ago petitioner deceided that if the time were right, he would like to join the Internal Revenue Service.

He deceided to discuss the matter with a couple of men who were Internal Revenue Agents and fathomed that he could expect to be hired as a Grade 11, then after one year he could expect a Grade 12 and then after two years he could expect a Grade 13. This however, was if he were a Certified Public Accountant.

He therefore applied, took the IRS interview, passed same, and then filed out an application. This was in February 1970.

Petitioner deceided to leave his position at which he was earning $300 per week and wait for the IRS position. Lo and behold, petitioner was notified that due to the fact President Richard M. Nixon had deceided to use the monies for the guards against air pirates, their would be no hiring by IRS, however, my name would be kept on the list. Unfortunately for me, this meant getting a new position. However, petitioner felt since it was his own fault, somehow he would muddle through, they certainly would call people the next year. Due to hard times, etc. he managed to get a position paying $200 per week.

Then on May 7, 1971, along came the offer from the IRS (referred to on Page 4) which the petitioner refused.

Petitioner's application (Appendix

E - p. 1) shows that his primary place of employment was Los Angeles and no other. Subterfuge was used as to location of the position, while all the time it was DISCRIMINATION BASED UPON AGE. Does the government have the right to send one to a place they did not ask for and call that a legitimate offer?

Petitioner was angry because he felt an injustice had been committed and so he wrote letters and received replies (Appendix D - p. 1-7, 18-22), but to no avail. He filed suit on July 29, 1971 and it was filed with the government on August 4, 1971.

To my utter amazement petitioner received a letter on August 6, 1971, offering a position (Appendix D - p. 8). At this point, petitioner no longer felt he could accomplish the

the steps on Page 7, Par. 2. An offer is not a valid offer, if made by one who discriminates against another. Petitioner did not refuse to accept position (Appendix D - p.9).

Then to my surprise another letter came (Appendix D - p. lo). Again the same answer (Appendix D - p. 11).

Then like a bolt out of the blue came still another missive (Appendix D - p. 12). Again the same reply (Appendix D - p. 13).

Know to take a closer look at offer of so-called position:

(1) It took from February 1970 until May 7, 1971 for the Los Angeles office to have twenty seven (27) positions. You will recall twenty six (26) were hired and petitioner was not hired.

(2) During the period from May 7, 1971 until August 5, 1971 their were no hirings.

(3) Then suddenly, after the government was notified they were being sued on August 4, 1971, a position suddenly became available. Petitioner is sure that President Nixon or Commissioner Walters did not call for his services, therefore the position which they offered was either illegally offered, or they again offered the position they had available due to the fact that petitioner had refused same. It appeared to me that if they were offering me the same position in a different area that was available on May 7, 1971 they therefore had to be discriminating against me.

(4) For the record, petitioner did not refuse position, but said

matter is under litigation, which it was. Petitioner does not care to be addressed by persons who have discriminated against him.

Then on January 15, 1972, petitioner sent a letter to Mr. John L. Guth, Assistant U. S. Attorney (Appendix D - p. 14, 15). Then after thinking about it, he deceided to write to one hundred Senators and one Congressman. He received a reply, not directly, but addressed to Senator John V. Tunney (Appendix D - p. 16, 17).

Based on the foregoing facts, based upon my education and experience, based upon Mr. Marshall R. Martinez, Chief, Staffing Programs Section, statement as to eligibility, based upon Mrs. Diane Herrmann rating of 27 out of 27 applicants, petitioner feels that they did DISCRIMINATE against

him BASED UPON AGE on or about May 6, 1971.

see Public Law 89-554; 80 Stat 378, Sect 3307 (Appendix C - p. 1) and Federal Personnel Manuel (Appendix C - p. 2).

POINT II

RIGHT TO SUE

Congress has granted me the right to sue in Public Law 90-202, 81 Stat 602, Sec. 7 (c) (Appendix C - p. 6) petitioner quotes:

"Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act; Provided, That the right of any person to bring such action shall terminate upon the commencement of an action by the Secretary to enforce the right of such employee under this Act"

The petitioner tried to get the Secretary to commence action on his behalf but was told by one of his

employees that he could not take action against another department of the United States Government. Therefore everything after the word Provided does not apply. Since the petitioner is any person the United States thereby gives me the right to sue.

The petitioner also quotes from Sec. 4. (a) of the same Act:

"It shall be unlawful for an employer"

The United States employs in excess of thirteen million people and therefore can be assumed to be an employer.

The petitioner also quotes from Sec 4. (a) (1) of the same Act:

"to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privilegs of employment, because of such individual's age;"

Petitioner would be allowed to sue any employer for violation committed therein.

Petitioner now quotes from Title 5 Sec. 702-Right of Review:

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statue, is entitled to judicial review thereof.. Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392."

Accordingly the petitioner has been aggrieved by the failure of the United States to live up to Public Law 90-202, 81 Stat 602.

Petitioner is suing under Title 28 Sect. 1346 (b) and therefore he is suing for personal injury brought abount by the negligent or wrongful act of the United States Government. Such action by the United States Government was not only negligent or wrongful but was discriminatory.

The provisions of 28 U.S.C. Sect. 2680 (a) is as follows:

The provisions of this chapter and section 1346 (b) of this title shall not apply to-

(a) Any claim based upon an act or omission of an employee of the Government exercising due care, in the execution of a statue or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused"

Discrimination is not exercising due care.

Therefore for reasons stated above the petitioner feels he has the right to sue the United States Government.

POINT III

TORT

Petitioner quotes from Blacks Law Dictionary:

"Three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach

of duty, and damage as proximate result"

The legal duty of the United States was as follows:

(1) Too accept the application.

(2) To check out the application.

(3) To make an offer of a position which recognises the rights of the applicant, as far as place of employment.

The breach of duty took place when they failed to offer a position in Los Angeles (primary place of employment-specified in Appendix E - p. 1).

The breach taking place as a result of DISCRIMINATION BASED UPON AGE.

They did damage to petitioner in the following manner:

As to damages, they can best be expressed by the fact that my wife

and myself were near divorce, that my son thinks the petitioner is a fool, that my parents no longer wish me to discuss the case with them, that my sisters have the same attitude, that my friends think the petitioner is a fool, and last but not in the very least my reputation has been damaged.

POINT IV

COMMENTS

It has been the practice to absolve the United States from liability in almost all cases, however, their has been passed by Congree, a law, which changes all of the preceding attatudes--this is Public Law 90-202, 81 Stat 602, dated December 15, 1967. (Appendix C - p. 4-10).

Petitioner would like to quote the words of the late President John F. Kennedy:

"In the message to the Congress transmitting my recommendations relating to a program for our older citizens, I point out that it is the policy of the Federal Government as an employer to evaluate each job applicant on the basis of ability, not age." (underscore mine)

Petitioner will stand on his ability.

CONCLUSION

For the reasons given certiorari should be granted and the judgement should be reversed.

Respectfully,

Ernest Levine

ERNEST LEVINE
5651 Corteen Place
North Hollywood, Calif.
91607

May 19, 1972

Petitioner

Petitioner would like to thank the Honorable Chief Justice Burger and the Esteemed Associate Justices of the Supreme Court of the United States for giving him the opportunity

to present this petition. Petitioner wrote it himself, typed it and assembled it and hopefully did not make too many errors.

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE WILLIAM P. GRAY,

JUDGE PRESIDING

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| | | |
|---|---|---|
| ERNEST LEVINE, PLAINTIFF, | ) | |
| vs. | ) | No. 71-2855-Civil |
| UNITED STATES OF AMERICA, et al., DEFENDANTS. | ) | |

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA, MONDAY, JANUARY 10, 1972.

THE CLERK: Item no. 10, Case No. 71-2855-Civil, Ernest Levine v. U. S. A., and others; hearing on defendant's motion to dismiss.

MR. GUTH: John L. Guth, Assistant J. S. Attorney.

THE COURT: Mr. Levine--

Mr. LEVINE: Wait, wait, wait. Let me say something.

THE COURT: Mr. Levine--

MR. LEVINE: Okay. I have something very important to say.

THE COURT: Mr. Levine, you are

going to spend the night in jail unless you stop interrupting the court. When the court begins to speak, you do not interrupt. I am about to ask a question.

MR. LEVINE: Okay, all right.

THE COURT: What is the difference between the present complaint and the one that you had in this court a few months ago?

MR. LEVINE: Okay. I would like to read you something which I think will straighten it out immediately.

THE COURT: Let me ask you this: Is it any longer than the one you had last time?

MR. LEVINE: Well, it may be a little longer, but it will be very pertinent.

THE COURT: All right.

MR. LEVINE: "Your Honor, the plaintiff hereby presents an Act of Congress which hereby negates the motion to dismiss. It is from the United States statutes at large, Volume 81, pages 602 to 608, Public Law 90-202. The title of it is "Age Discrimination in Employment Act of 1967."

Also, I further quote from Section 4(a):

"It shall be unlawful for an employer one. to fail or refuse to hire or to discharge any individual or otherwise discriminate any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age."

Also, I further quote from Section 12:

"The provisions in this Act shall be limited to individuals who are at

least 40 years of age, but less than 65 years of age."

As to the right of myself to sue the United States, the plaintiff further quotes from Section 7 of 90-202:

"Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act: provided that the right of any person to bring such action shall terminate upon the commencement of an action by the Secretary to enforce the rights of such employee under this Act..."

I have a little more. Plaintiff further quotes from Black's Law Dictionary. This is a definition of "tort":

"Three elements of every tort action are: Existence of legal duty from defendant to plintiff, breach of duty, and damage as proximate result."

Also, I want to quote a little bit from the Federal Tort Claims Act by William Wright. There are two methods provided for obtaining relief under the Federal Tort Claims Act:

"A claimant may elect to accept an administrative settlement by the head of the department allegedly responsible for the wrong if this claim does not exceed $1,000, and suit for any amount may be prosecuted in the Federal District Courts."

I have for your Honor, if you want a copy of the Act.

THE COURT: Of the Tort Claims Act?

MR. LEVINE: No, this Act which I read from.

THE COURT: All right.

MR. LEVINE I also have copies for the Assistant District Attorney.

THE COURT: All right. Anything further?

MR. LEVINE: That's all. I have nothing else to say.

THE COURT: Mr. Levine, for reasons that I have spelled out at length the last time you were here, I am obliged to conclude that you may not bring an action against the Federal Government under the Tort Claims Act for the offense that you seek to present in your complaint.

There is no difference between this case and the prior one that I dismissed.

A trial judge isn't always right. If you feel that you are aggrieved, you have a right to appeal, but you may not bring another action which simply seeks the same relief as the one concerning which--

MR. LEVINE: Can I ask the court another question, your Honor?

THE COURT: No, you will not. If you seek relief, you may appeal from the first dismissal, but you may not file action after action seeking the same relief that was denied to you before. The courts just don't have time to entertain that type of conduct.

Now, you may ask your question and I'll--

MR. LEVINE: Can I look at my briefcase for a moment? Then I can take out my question.

(Brief interruption.)

MR. LEVINE: It says, the District

Courts and civil actions based on tort claims brought under Section 1346 (b), which is the one I brought in here-- is this correct? Do I file an appeal with the Court of Claims?

THE COURT: No, you appeal to the Court of Appeals, the Ninth Circuit.

MR. LEVINE: Okay. Thank you.

THE COURT: All right. The motion to dismiss is granted.

Would you prepare an appropriate order, please?

MR. GUTH: Yes, sir, on the grounds of the other claim?

THE COURT: Yes.

MR. LEVINE: Thank you.

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5651 CORTEEN PLACE
NO. HOLLYWOOD, CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| | | |
|---|---|---|
| ERNEST LEVINE<br>Plaintiff, | ) | |
| vs. | ) | No. 71-1769-<br>Civil |
| UNITED STATES OF AMERICA,<br>et al.,<br>Defendants. | ) | |

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA, MONDAY,
NOVEMBER 22, 1971.

THE CLERK: Item No. 12, Case No. 71-1769 Civil, Ernest Levine v. U. S. A. hearing on defendant's motion to dismiss.

MR. GUTH: John Guff appearing for the defendants.

MR. LEVINE: Ernest Levine appearing for himself.

THE COURT: Mr. Levine, I have read all of the papers in this matter, but the thought that occurs to me is that you are a better accountant than you are a lawyer.

In the first place, my earnest and considered opinion is that you cannot recover damages against the United States Government. There are only two bases upon which a claim that might be even close to this could be recovered against the United States Government: One is under the Tort

Claims Act. This is not a tort action. And the other is under the Tucker Act, which is limited, in the first place, to $10,000, and I just cannot conclude that this is under the Tucker Act, either. The Tucker Act provides for claims against the United States not exceeding $10,000 founded either upon the Constitution--I'll talk about that in a minute--or any Act of Congress. There is no Act of Congress or any regulation of the Executive Department. I know you cite certain of those regulations, but that is not the kind of regulations that gives a cause of action or upon any expressed or implied contract with the United States or for liquid or unliquidated damages in cases not sounding in tort.

The United States hasn't agreed to be sued in damages. You cannot prevail upon the United States, and as far as an action against the employee is concerned, the United States laws provide for bringing actions under the Tort Claims Act for negligence of the employee, but these men, rightly or wrongly, were acting on behalf of the United States in the course of their duties, and in this court's judgment, although you can sue to enjoin or sue in mandamus, they are immune from damage actions, and even though if you did get a damage judgment against these fellows, you are not going to recover any substantial sum. They just don't have any.

Also, I am not a bit sure that there is any statutory or constitutional right not to be discriminated against because of age. The closest thing

that comes to that is the Civil Rights Act, but that talks about a discrimination because of race, color, religion, sex, or national origin. It does not show anything about age at all.

Now, the thing that bothers me is that you were offered a job and did not accept it.

What this court is going to have to do is dismiss this action.

You have a right to appeal.

MR. LEVINE: Yes, I do.

THE COURT: It takes about a year or so to have the matter determined by the Court of Appeals, and even if you prevail there, it will come right back here.

MR. LEVINE: You see, your Honor, I am very determined in this case because of the way it was handled. All right, let me read you what I have written.

THE COURT: How long is it?

MR. LEVINE: Very short, your Honor.

THE COURT: All right.

MR. LEVINE: (Reading)

"Your Honor, the plaintiff wants to thank the Government of the United States of America and Judge Gray for the opportunity to appear before this court. This court, though complicated, appears to me to be a court of equity. As such, the plaintiff cannot see how a certified public accountant, and having over 28 years of experience, can be judged too old in the original rating

"The plaintiff wants the opportunity of proving this point.

"there are 50 percent of the people of the United States over the age of 50. Are these people to be told they are too old? Are these people to be told that the words of President John F.

Kennedy and President Lyndon B. Johnson are Lies?"

THE COURT: Let me ask you again.

MR. LEVINE: Yes.

THE COURT: How long is this statememt?

MR. LEVINE: It is coming to an end now.

"The plaintiff asks the motion to dismiss should be denied.

"The plaintiff wishes to thank the court."

THE COURT: All right.

Mr. Levine, we go through life, as any lawyer knows, being subjected to all kinds of things that we think are unfair. The law is not always fair. Not always is it true that for every unfairness there is a remedy in the law.

You say 51 isn't old. I agree with you, because I am 59 and I am still a young man, but this court has limited jurisdiction. Any rights that this court can grant are those that can be pointed to in the Constitution of the United States or in the laws of the land, and I think it is unfortunate for a person to be discriminated against because of his age, if that is a fact. But you would have an uphill battle in proving it was because of that fact, and even if you did prove it, as I say, in this court judgment, you do not have a legal justiciable claim for damages against anybody.

Now, I recommend to you most heartily, sir, that instead of litigating to vindicate your position, that you look to making your living by being an accountant which you know something about.

The thing that I fear--and now that you have your back up--you will appeal this judgment. It will take a couple of years. About that time you will be 53.

MR. LEVINE: I have plenty of time. I have all the time in the world.

THE COURT: The motion is granted. The case is dismissed.

Will the Government prepare an appropriate order?

MR. GUTH: Yes, your Honor.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| ERNEST LEVINE, Plaintiff-Appellant v. UNITED STATES OF AMERICA, et al., Defendants-Appellees. | ) | No.72-1371 |
| | ) | ORDER |

Before: CHAMBERS and HUFSTEDLER, Circuit Judges

Plaintiff's motion for summary reversal of the district court and for other affirmative relief is DENIED.

Filed
Mar 23, 1972
Wm. B. Luck,
Clerk

Excerps from P L 89-554; 80 Stat 378

Entitled "Government Organization and Employees"

Section 3307. Competitive service; maximum-age requirement; restriction on use of appropriated funds

Appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

Section 8912. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the Court of Claims, of a civil action or claim against the United States founded on this chapter.

These are the only parts of the law applicable.

## 4-4. AGE

a. **Competitive service.** Section 3307 of title 5, United States Code, provides that appropriated funds shall not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service. The effect of this provision of law is that the Commission and agencies are prohibited from establishing maximum-age limits for entrance into the competitive service. The prohibition on the setting of maximum-age limits also applies to appointments by noncompetitive action to positions in the competitive service. As a consequence, no maximum-age limit shall be applied by agencies in merit promotion examinations or in selections through any type of noncompetitive action (such as reinstatement or transfer) to positions in the competitive service.

NOTE: Despite the provisions of section 3307 of title 5, United States Code, the Secretary of the Interior is authorized by Public Law 91-73 (83 Stat. 116) to determine and fix the minimum and maximum limits of age within which original appointments to the United State Park Police may be made.

On the following pages is a copy of Public Law 90-202, 81 Stat 602 Entitled "Age Discrimination in Employment Act of 1967"

COPY BOUN

To prohibit age discrimination in employment.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Age Discrimination in Employment Act of 1967".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

EDUCATION AND RESEARCH PROGRAM

SEC. 3. (a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potential for continued employment and contribution to the economy. In order to achieve the purposes of this Act, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this Act the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 12.

Sec. 4. (a) It shall be unlawful for an employer—

(1) to fail or refuse to hire, or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this Act.

(b) It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act.

(e) It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual; or



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(3) to discharge or otherwise discipline an individual for good cause.

STUDY BY SECRETARY OF LABOR

SEC. 5. The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

ADMINISTRATION

SEC. 6. The Secretary shall have the power—

(a) to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this Act;

(b) to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

RECORDKEEPING, INVESTIGATION, AND ENFORCEMENT

SEC. 7. (a) The Secretary shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this Act in accordance with the powers and procedures provided in sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 209 and 211).

(b) The provisions of this Act shall be enforced in accordance with the powers, remedies, and procedures provided in sections 11(b), 16 (except for subsection (a) thereof), and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(b), 216, 217), and subsection (c) of this section. Any act prohibited under section 4 of this Act shall be deemed to be a prohibited act under section 15 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 215). Amounts owing to a person as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216, 217): *Provided*, That liquidated damages shall be payable only in cases of willful violations of this Act. In any action brought to enforce this Act the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this Act through informal methods of conciliation, conference, and persuasion.

(c) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act: *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Secretary to enforce the right of such employee under this Act.

(d) No civil action may be commenced by any individual under this section until the individual has given the Secretary not less than sixty days' notice of an intent to file such action. Such notice shall be filed—

(1) within one hundred and eighty days after the alleged unlawful practice occurred, or

(2) in a case to which section 14(b) applies, within three hundred days after the alleged unlawful practice occurred or within thirty days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving a notice of intent to sue, the Secretary shall promptly notify all persons named therein as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Sections 6 and 10 of the Portal-to-Portal Act of 1947 shall apply to actions under this Act.

NOTICES TO BE POSTED

SEC. 8. Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this Act.

RULES AND REGULATIONS

SEC. 9. In accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, the Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

CRIMINAL PENALTIES

SEC. 10. Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Secretary while he is engaged in the performance of duties under this Act shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both: *Provided, however*, That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

DEFINITIONS

SEC. 11. For the purposes of this Act—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof. Appendix C - p. 7

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any activity or industry affecting commerce within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

LIMITATION

SEC. 12. The prohibitions in this Act shall be limited to individuals who are at least forty years of age but less than sixty-five years of age.

ANNUAL REPORT

SEC. 13. The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the effect of the minimum and maximum ages established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the Act upon workers not covered by its provisions, and such other factors as he may deem pertinent.

FEDERAL-STATE RELATIONSHIP

SEC. 14. (a) Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this Act such action shall supersede any State action.

(b) In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 7 of this Act before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

EFFECTIVE DATE

SEC. 15. This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and

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undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization--

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes

(b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

APPROPRIATIONS

SEC. 16. There are hereby authorized to be appropriated such sums not in excess of $3,000,000 for any fiscal year, as may be necessary to carry out this Act.

Approved December 15, 1967.

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May 24, 1971

Mr. Randolph W. Thrower
Commissioner of the
Internal Revenue Service
1111 Constitution Avenue N.W.
Washington, D.C. 20224

Dear Mr. Thrower:

The purpose of this letter is to advise you how deeply disturbed I am and how such prejudice can be condoned by the government of the United States.

I cannot understand why a Certified Public Accountant who is a graduate from a recognized school, has 29 years of experience and has passed the oral examination given by the Internal Revenue Service can not be qualified as an Internal Revenue Agent - Grade 11.

I was notifyed on May 7, 1971 that there was an opening in Bakersfield, Calif. and another in El Centro, Calif. and I refused same. My application clearly stated Los Angeles,Calif. At that time I learned that I was rated 27th out of 27. Last place. I subsequently learned all 26 persons other than myself were being employed. Mrs. Diane Herrman also told me that I was number 1 on the list until June 30, 1971.

Subsequent to May 7, 1971 I spoke to a Mr. Martinez who informed me I would be on the list beyond July 1, 1971. I do

not understand the conflict. Later on, I had another conversation in which he stated how the applicants are rated. Namely the requirements are:

1. Experience
2. Education
3. Oral interview.

My case is based mainly on this point. Namely how can a Certified Public Accountant with 29 years experience possibly be 27th out of 27. I believe if I was ranked fairly I would be much higher. I can only conclude that I was discriminated because of my age or my religion.

Because time is short, I implore you to make all contacts you feel necessary by telephone wherever possible.

I am also enclosing whatever correspondence I received or sent.

Trusting you will make a favorable decision.

Very truly yours,

ERNEST LEVINE
Certified Public Accountant

EL
Encl.

Department of the Treasury

Internal Revenue Service
Washington, D.C. 20225

Date JUN 7 1971 In reply refer to A:P:E

Mr. Ernest Levine
Certified Public Accountant
5651 Corteen Place
No. Hollywood, California

Dear Mr. Levine:

This is in reply to your letter which was recently sent to us by Commissioner Thrower.

We have been in contact with officials in the Los Angeles District Office to obtain information about your application. We have been told your application is still under consideration, and when additional recruiting authority is received, the chances of your being employed are excellent. We were assured that the only reason you were not appointed previously was due to the limited number of vacancies and the number of eligible candidates ahead of you on the Civil Service register. Also, not all of those ahead of you were appointed. A number of other candidates were informed that due to the limited number of positions they could not be considered for the Los Angeles area at that time.

I regret this misunderstanding has developed, but I am confident the Los Angeles officials have followed the only alternatives available in handling your application.

I appreciate your interest in employment with the Revenue Service and assure you that your application is receiving every appropriate consideration.

Sincerely,

A. J. Schaffer

Director, Personnel Division

June 21, 1971

Mr. A. J. Schaffer
Director, Personnel Division
Department of the Treasury
Internal Revenue Service
Washington, D. C. 20224

Ref: A:P:E

Dear Mr. Schaffer:

Thank you very much for your reply of June 7, 1971, but you evidentally missed the entire point of my letter. I did not ask you to call Los Angeles to get me some of their standard replies as far as inquiry is concerned.

Therefore, I am asking you again to research the problem with specific instructions namely:

1. Have Xerox copies made of all original applications of the 27 persons applying for the position (25 being accepted) - if they told you more applied they either lied to you or to me. Have them send Xerox copies of those applications.

2. Have them Xerox copies showing the results of the oral interview for all 27.

3. Have them Xerox copies of service records for all 27.

The whole idea is not to have them make another evaluation but make one of your own. Either have the data rated by yourself or as the Civil Service Bureau is in Washington, have them do it. You will then have the ratings in order.

Based upon the new ratings, I hope I will show up favorable (better than 27th) and then I wish to be appointed to a position in Los Angeles immediately.

I implore you to please follow this method. I firmly believe I was discriminated against on account of age or religion.

I am sorry I was so direct and dictatorial, but the attainment of this post is so important to me. I know I can do a good job for the U.S. government.

Trusting to hear from you soon,

Very truly yours,

ERNEST LEVINE
Certified Public Accountant

cc: Mr. Randolph W. Thrower

Department of the Treasury

Internal Revenue Service
Washington, D.C. 20224

Date: June 29, 1971

In reply refer to: A:P:E

Mr. Ernest Levine
Certified Public Accountant
5651 Corteen Place
No. Hollywood, California

Dear Mr. Levine:

This is to acknowledge your recent letter concerning the status of your application.

We are looking into facts in this matter and will send you a reply as soon as possible.

Sincerely yours,

Director, Personnel Division

Internal Revenue Service

August 2, 1971 A:P:E

Mr. Ernest Levine
Certified Public Accountant
5[illegible] Carlton Place
No. Hollywood, California

Dear Mr. Levine:

This is in further response to your inquiries regarding your application for the position of Internal Revenue Agent in our Los Angeles District.

After a careful and complete review of your application and those of your competitors, the ratings assigned to the individual applications proved to be correct and accurate. Those ratings were determined when the Civil Service Commission applied the qualification standard for the Revenue Agent position and assigned the appropriate credits for the experience and education shown. Granted that your 29 years of experience is of significant worth, but the competition for the position was keen and others also had highly creditable experience and education.

You were among such a select group, that only those with an outstanding background could be considered. As you can well imagine we are most anxious to employ as many applicants of this select group as possible. The Los Angeles District officials assure us that as soon as budgetary authority is received you will be contacted and given another job offer and it will be for a post of duty other than one which is limited to Bakersfield or El Centro.

Sincerely yours,

A. J. Schaffer
Director, Personnel Division

Address any reply to: P.O. Box [illegible], [illegible], 90053

Internal Revenue Service

August 6, 1971 Ad:PE

Mr. Ernest Levine
5651 Corteen Place
North Hollywood, CA 91607

Dear Mr. Levine:

We have recently learned that we can fill a limited number of Revenue Agent positions around October 4, 1971. These positions will be located in the Metropolitan Los Angeles area.

If you are available for these positions, please call us by August 13, 1971, at 213-688-4132. I would also appreciate knowing if you are not available.

Very truly yours,

Diane Herrmann

(Mrs.) Diane Herrmann
Personnel Staffing Specialist

August 7, 1971

US Treasury Department
P.O. Box 391
Los Angeles, Calif. 90053

Dear Mrs. Herrmann:

In reply to your letter of August 6, 1971, I wish to advise you that the matter is under litigation.

Very truly yours,

ERNEST LEVINE
Certified Public Accountant

Address any reply to: P. O. Box 3[illegible] Los Angeles, Calif. 90053
[illegible] Treasury Depart[illegible]

[illegible] District Director
**Internal Revenue Service**
Date: August 17, 1971 In reply refer to: Ad:PE

Mr. Ernest Levine
5651 Corteen Place
North Hollywood, CA 91607

Dear Mr. Levine:

Because we have received additional hiring authority, we can now begin recruiting for a class in October. In line with our previous correspondence, we would like to offer you a position as an Internal Revenue Agent, GS-11, $12,615, at Los Angeles.

If you wish to accept this offer, please call me by August 30, 1971, at 688-4132. I would also appreciate knowing if you decline our offer.

Very truly yours,

(Mrs.) Diane Herrmann
Personnel Staffing Specialist

August 18, 1971

US Treasury Department
P.O. Boxx391
Los Angeles, Calif. 90053

Dear Mrs. Herrmann:

In reply to your letter of August 17, 1971, I wish to advise you that the matter is under litigation.

Very truly yours,

ERNEST LEVINE
Certified Public Accountant

Address any reply to: P. O. Box 36 ... Angeles, Calif. 90053

US Treasury Department

Internal Revenue Service

Date: August 24, 1971 — In reply refer to: Ad:PE

Mr. Ernest Levine
5651 Cortoon Place
North Hollywood, CA 90607

Dear Mr. Levine:

As we stated in our letter to you of August 17, 1971, we are now recruiting for an Internal Revenue Agent class which is scheduled to commence in October, 1971. In order that you may be made part of this class, we offered you in the August 17 letter a position as an Internal Revenue Agent, GS-11, at a starting salary of $12,615 per annum, with the post-of-duty of downtown Los Angeles. That constituted the second employment offer which was mentioned in our previous correspondences.

Also, we requested that if you accepted our offer, you should contact Mrs. Herrmann by August 30, 1971, at 688-4132. This is to inform you that if we do not receive a positive acceptance of this second offer from you by that date, all other replies or non-replies will be considered a declination of the offer and your application for the Revenue Agent position will not be considered further.

Very truly yours,

Marshall R. Martinez
Chief, Staffing Programs Section

August 26, 1971

US Treasury Department
P. O. Boxx391
Los Angeles, Calif. 90053

Dear Mr. Martinez:

In reply to your letter of August 24, 1971, I wish to advise you that the matter is under litigation.

Very truly yours,

ERNEST LEVINE
Certified Public Accountant

ERNEST LEVINE
CERTIFIED PUBLIC ACCOUNTANT
8681 CORTEEN PLACE
NO. HOLLYWOOD, CALIFORNIA 91607

Mr. John L. Guth
Assistant U. S. Attorney
1100 U. S. Courthouse
312 North Spring Street
Los Angeles, California 90012

January 15, 1

Dear Mr. Guth,

On January 12, 1972, I filed an appeal with the United States Court of Appeals in the Ninth Circuit of California. It appears to me that prehaps the best thing to do would be to take a short look at the entire picture. Accordingly certain facts may be laid out as follows:

1. At the time of application, I was 50 years of age
2. I am a Certified Public Accountant in New York (1947) and in California (1952)
3. At the time of application, I had at least 28 years of public and private experience
4. The following poster hangs in the Internal Revenue Service "The Management of the Los Angeles Internal Revenue Service is committed to a policy of equal opportunity, free from discrimination based on race, color, religion, national origin, sex and age. (underscore mine)
5. Public Law 90-202 entitled "Age Discrimination in Employment Act of 1967"

I now suggest that you make the following recommendation to Mr. Johnnie M. Walters, Commissioner of the Internal Revenue Service:

Appendix D - p. 14

TELEPHONE
761-6439

ERNEST LEVINE
CERTIFIED PUBLIC ACCOUNTANT
8851 CORTEEN PLACE
NO. HOLLYWOOD, CALIFORNIA 91607

1. That he contacts Mr. Frank S. Schmidt, District Director Internal Revenue Service in Los Angeles and have him personally evaluate if discrimination based on age took place. The applications of Ernest Levine and the 26 applicants who attended in the week ending July 9, 1971, the Internal Revenue Regional Training Center at 15301 Gault Street, Van Nuys, California should be reviewed.. Such time as Mr. Frank S. Schmidt has evaluated the documents, report back to Mr. Johnnie M. Walters.
2. At such time I suggest that either Mr. Johnnie M. Walters or yourself contact me.

Very truly yours,

Ernest Levine

US Treasury Department

FEB 4 1972

Chief Counsel
Internal Revenue Service
Washington, DC 20224

Honorable John V. Tunney
United States Senate
Washington, D. C. 20510

Dear Senator Tunney:

As our Mr. Schaffer advised you in his acknowledgement letter of January 27, 1972, your referral of a letter from Mr. Ernest Levine, of North Hollywood, has been forwarded to this office.

As Mr. Levine's letter indicated, he has appealed to the United States Court of Appeals for the Ninth Circuit from the dismissal of his action brought against certain Government officials, involving his allegation that he was denied employment by the Internal Revenue Service by reason of his age. As the Government pleadings indicate, Mr. Levine's suit was without merit, and for that reason it was dismissed. Furthermore, the Internal Revenue Service made several employment offers to Mr. Levine, all of which he refused. From his persistent refusal to accept our offers we concluded that he was primarily interested in litigation rather than employment.

We are satisfied, from our own review of the matter, that the Los Angeles office of the Internal Revenue Service gave Mr. Levine a fair opportunity for Government employment. In view of the present status of the case, we believe that we should allow the Court of Appeals to consider it without further

administrative action on the part of the Service.

Sincerely yours,

LEE H. KENKEL, JR.
Acting Chief Counsel

May 20, 1971

San Francisco Interagency Board
of U.S. Civil Service Examiners
450 Golden Gate Avenue, Box 36122
San Francisco, California 94102

Gentlemen:

The purpose of this missive is to advise you how deeply disturbed and disappointed I am as a result of the action taken by your Los Angeles office.

Enclosed please find copies of all correspondence received or sent by me since I filed the original application on February 2, 1970.

I have had several conversations by telephone with Mrs. Diane Herrman and Mr. Martinez, and to my amazement they are in conflict.

However, on May 20, 1971 I had a conversation with Mr. Martinez and the jist of the conversation was the way the Civil Service Commission ranked the applicants namely:

1. Experience
2. Education
3. Oral examination

I would appreciate your confirming the above and would also like my rating on each of the categories, and also supply my overall rating.

Also wish to state that I was 27th out of 27 applicants of which 26 persons were employed and I was not.

Would appreciate your giving this matter your immediate attention.

Very truly yours,

Encls.

ERNEST LEVINE
Certified Public Accountant

91607

June 15, 1971

San Francisco Interagency Board
of U.S. Civil Service Examiners
450 Golden Gate Avenue, Box 36122
San Francisco, California 94102

Gentlemen:

On May 20, 1971 I wrote( copy of the letter enclosed) and on May 24, 1971 it was received by you. It is of the utmost importance that I receive a prompt reply..

Thank you.

Very truly yours,

Encls..

ERNEST LEVINE
Certified Public Accountant

UNITED STATES CIVIL SERVICE COMMISSION

SAN FRANCISCO AREA OFFICE
FEDERAL BUILDING
450 GOLDEN GATE, BOX 36123
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY PLEASE REFER TO

FR:M:AKW:df

YOUR REFERENCE

July 9, 1971

Mr. Ernest Levine
5651 Cortoon Place
No. Hollywood, California 91607

Dear Mr. Levine:

We wish to apologize for our delay in answering your letter. We have discussed the problems of your employment with a representative of the Internal Revenue Service in Los Angeles and have been informed that they originally planned to appoint you to a position as Internal Revenue Agent, GS-11, but due to budgetary restrictions imposed upon them they were unable to do so. However, they indicate that they inquired about your availability in other locations in the area but that you were not available.

There have been fewer vacancies in Federal agencies in recent months and the number of qualified persons on our lists has increased. In addition, some Federal agencies have been forced to reduce personnel; and these qualified individuals must be given first consideration when filling vacancies at all Federal agencies.

A new nationwide announcement has been issued which is appropriate for filling vacancies for Accountant/Auditor/Internal Revenue Agent. A copy of this announcement is enclosed. You will note that all previous announcements for these positions have been superseded. As a result of this new announcement, all eligibles who were placed on the superseded register for Internal Revenue Agent, GS-9/11, announcement No. SF-32-1(67), prior to May 1, 1970, were terminated. Our records show that your name was placed on the register on April 9, 1970. Therefore, in order to be considered for any position as an Internal Revenue Agent or for any other Accountant or Auditor position, it will be necessary for you to submit a new application in the new examination. An application Form SF-171 and CSC Form 226 are enclosed for this purpose.

A number of significant changes have been made in this new announcement. You will note that the GS-11 grade is not rated numerically. Since jobs at this and the GS-12 grade fall into several specialized categories, relative qualifications of the individual will be reevaluated

each time an opening occurs, and he will be ranked according to how well he meets the specific requirements for the particular job.

For your information, in the previous announcement for Internal Revenue Agent, applicants were required to have had specific amounts, quality and kinds of accounting or auditing experience with substitutions allowed to some extent for education to meet the minimum requirements. Final numerical ratings were based on the extent, quality and diversity of the professional accounting and auditing experience which utilized the knowledge and application of generally accepted professional accounting and auditing principles, theory and practices for the purpose of analyzing and interpreting accounting books, records, or systems in terms of their effect on Federal tax liabilities and their adequacy for recording transactions affecting tax liabilities.

All eligibles were subject to an oral interview at the time of appointment. Interviews were based on observable personal qualifications essential to successful performance on the job. Persons who lacked the personal qualities and aptitudes necessary for successful performance were declared ineligible for the position. The numerical rating of the applicant and his position on the list were not changed by passing this interview. All applicants were evaluated against the same standard and final numerical ratings were based on the competitor's statements in his application and upon additional evidence secured.

Eligibles are referred to agencies for consideration in order of their numerical score on the register, provided they are available for the position in the specific location. In making a selection, the agency has a choice of any one of the top three eligibles on the list for each vacancy.

We hope this will clarify the problems you have experienced in being appointed to a position with the Internal Revenue Service. We are enclosing a pamphlet "Working for the U.S.A." which may also be of interest to you.

We will be pleased to receive an application from you for the new examination. You may also wish to consider the possibility of extending your availability to lower grades and to a wider area.

Sincerely yours,

Justice M. Kashevaroff

JUSTICE M. KASHEVAROFF
Area Manager

Enclosures

# APPENDIX E

# PERSONAL QUALIFICATIONS STATEMENT

Budget Bureau Approved 50-R356.7

1a. Kind of position (job) you are applying for: INTERNAL REVENUE AGENT

1b. Announcement number (if any): N/A

1c. Options for which you wish to be considered (if listed in announcement announcement): P-3

2. Primary place(s) you wish to be employed: LOS ANGELES, CALIF.

3. Home telephone: Area Code 213, Number 761-2435

3. Business telephone: Area Code 213, Number 1788-2121

4. Name (Last) (First) (Middle) (Maiden, if any): LEVINE, ERNEST — [X] Mr. [ ] Miss [ ] Mrs.

5. Number and street, R.D., or Post Office box number: 5651 CORTEEN PLACE

6. City: NORTH HOLLYWOOD State: CALIF ZIP Code: 91607

7. Birth date: Month 1, Day 11, Year 20 (12-17-32)

8. Social Security Number: 572-32-7871

9. If you are currently on a register of eligibles for the appointment to a Federal position, give the name of the examination, the name of the office maintaining the register, the date on your notice of rating, and your rating: N/A

10. Lowest pay or grade you will accept: PAY per [ ] OR GRADE 11

11. Are you willing to travel? (Check one): [ ] NO [ ] SOME [X] OFTEN

12. When will you be available? IMMEDIATE NOTICE

13. Will you accept:

| | YES | NO |
|---|---|---|
| (A) Temporary appointment of — 1 month or less? | | X |
| — 1 to 4 months? | | X |
| — 4 to 12 months? | | X |
| (B) Less than full time work? (Less than 40 hours per week) | | X |
| (C) Will you accept a job in — Washington, D.C.? | | X |
| — any place in the United States? | X | |
| — outside of the United States? | | X |
| — only in (Specify): | | X |

14. EDUCATION

(A) Did you graduate from high school or will you graduate within the next nine months? YES [X] NO [ ] If YES, month/year: JUNE 1950. If NO, highest grade completed:

(B) Name and location (city and State) of last high school attended: MORRIS HIGH SCHOOL BRONX, N.Y.

(C) Name and location (city, State, and ZIP Code if known) of college or university. (If you expect to graduate within 9 months, give MONTH and year you expect degree.)

| Name and location | Dates attended From | Dates attended To | Years completed Day | Years completed Night | Credits earned Semester hours | Credits earned Quarter hours | Type of degree | Year of degree |
|---|---|---|---|---|---|---|---|---|
| PACE INSTITUTE NEW YORK, N.Y. | 1938 | 1942 | | | N/A | | AB | 1942 |

| (D) Chief undergraduate college subjects | Credits completed Semester hours | Credits completed Quarter hours | (E) Chief graduate college subjects | Credits completed Semester hours | Credits completed Quarter hours |
|---|---|---|---|---|---|
| ACCOUNTING | N/A | | | | |

(F) Major field of study at highest level of college work: ACCOUNTING

16. Other schools or training (for example, trade, vocational, armed forces, or business). Give for each the name and location (city, State, and ZIP Code if known) as closely as possible, dates attended, subjects studied, certificates, and any other pertinent data.

N/A

15. HONORS, AWARDS, AND FELLOWSHIPS RECEIVED: C.P.A.

16. FOREIGN LANGUAGES. Enter foreign languages and indicate your knowledge of each by placing "X" in proper columns: N/A

| | Reading | | | Speaking | | | Understanding | | | Writing | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Excl. | Good | Fair | Excl. | Good | Fair | Excl. | Good | Fair | Excl. | Good | Fair |
| | | | | | | | | | | | | |

17. Specific qualifications and skills (languages, shorthand, typing, machines, patents or inventions, publications—do not submit copies unless requested, publications, writing, design or professional or scientific societies, typing or shorthand speed, etc.): CALIFORNIA SOCIETY OF CPA'S

THE FEDERAL GOVERNMENT IS AN EQUAL OPPORTUNITY EMPLOYER

Standard Form 171 (Formerly SF 57) July 1966 171-101 U.S. Civil Service Commission

# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 71-1575

ERNEST LEVINE, PETITIONER

*v.*

UNITED STATES OF AMERICA, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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1. Petitioner, a 52 year-old certified public accountant, brought this action for $600,000 damages against the United States and the Commissioner of Internal Revenue alleging that he had been denied employment in the Internal Revenue Service on account of his age. The district court dismissed the action for failure to state a claim on which relief can be granted and the court of appeals, after deny-

ing petitioner's motion for summary reversal (Pet. App. B., p. 1), dismissed the appeal.

2. The decisions below are correct and further review is unwarranted. Moreover, the petition reveals that in response to petitioner's application for employment, the Internal Revenue Service informed him that the only vacancies available in his area were in Bakersfield and El Centro and offered to consider petitioner for employment in those cities (Pet. 4). Accordingly, petitioner's complaint is without factual basis.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

JULY 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 470533 876

Supreme Court, U. S.
FILED
AUG 11 1972
MICHAEL RODAK, JR., CLERK

No. 71-1575

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# REPLY BRIEF

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ERNEST LEVINE
5651 Corteen Place
North Hollywood, California
91607

Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

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No. 71-1575

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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# REPLY BRIEF

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TO THE SUPREME COURT OF THE UNITED STATES:

The Solicitor General forgot certain facts as far as the petitioner namely he is a 52 year-old Certified Public Accountant and has had over 30 years of experience and has passed the oral examination of the Internal

Revenue Service. As to the amount of money involved petitioner would like to quote Note 2, 28 U.S.C. Sect. 1346:

> "When dealing with a statute subjecting federal government to liability for potentially large sums of money federal Supreme Court must not promote profligacy by careless construction, but neither should court as a self-constituted guardian of the Treasury import immunity back into a statute designed to limit it."

Besides the impression the petitioner had of this court was that it dispensed justice and nothing else especially where if a decision were to be given the Judge would take care of it.

As to his second point, petitioner hopes that the court can indeed read much further than the Solicitor General , namely the letters refered too on the

bottom of Pet. 9 and on Pet. 10.

There has been passed by the Senate of the United States (Appendix A - p. 1) on July 20, 1972 S. 1861 an Act which amends Public Law 90-202, 81 Stat 602 as far as suit against the United States Government is concerned and is entitles "NON-DISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT". Petitioner urges all members of the court to obtain a copy of this bill, it was too lengthy to enclose. The provisions refering to Public Law 90-202, 81 Stat 602 start on Page 45.

It is rather evident that the Senate felt it was a mistake to make the United States immune from suit. Thus petitioner is suing for exactly the same reason.

Under RIGHT TO SUE on Pet. 13 the following shoud be inserted:

Congress has granted me the right to sue in Public Law 89-554, 80 Stat 378, Sec. 8912 (Pet. App. C.,p. 1).

As to the provision of the act petitioner is suing under it is Sec. 3307 (Pet. App. C.,p. 1). As far as the Federal Personnel Manuel-Vol 2, Chapter 713, Subchapter 18, 4-4 Age (Pet. App. C.,p. 2) petitioner would like to quote the following:

"The effect of this provision of law is that the Commission and agencies are prohibited from establishing maximum-age limits for entrance into the competitive service" (underline mine)

This is exactly what my COMPLAINT FOR DAMAGES FOR DISCRIMINATION BASED UPON AGE is all about. The minute Mrs. Diane Herrmann put the letter (Pet. 4) into the mail and the minute it was

received by me, DISCRIMINATION BASED UPON AGE had taken place. Also pertinent was the fact petitioner had specified Los Angeles and was offered a position in Bakersfield and El Centro (230 and 650 mile round trip, respectively).

Also in connection with above, petitioner would also like it too aply that in Pet. 14 and Page 15, where it start;

"The petitioner also quotes from Sec 4. (a) (1) of the same Act:"

Thought petitioner know it has no relavancy at this point he would like the Court to know that he sued twice because he was so advised by the Chief Clerk of the United States District Court.

Respectfully,

Ernest Levine

ERNEST LEVINE
5651 Corteen Place
North Hollywood, Calif.
91607

August 6, 1972

Petitioner

92D CONGRESS
2D SESSION

# H. R. 7130

## AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage under that Act, to extend its coverage, to establish procedures to relieve domestic industries and workers injured by increased imports from low-wage areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 1972

Ordered to be printed with the amendments of the Senate

Appendix A - p. 1